Civil Rights of Deaf Inmates: What You Can Do

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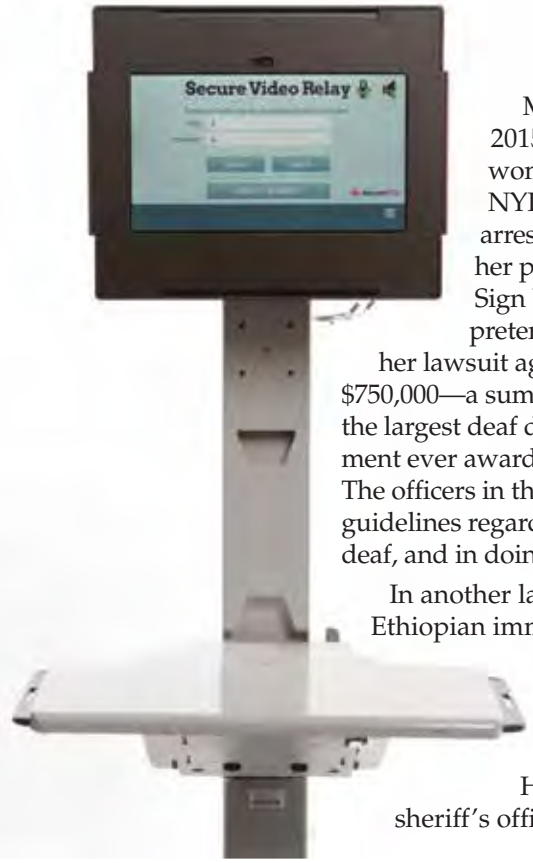
Over the past 40 years, Congress has enacted numerous laws specifically designed to ensure that disabled individuals have access to the communication services, programs, activities, public facilities, and other resources that are available to the general population. Specifically, Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, guarantees persons with disabilities equal access to any entity that receives Federal financial assistance, either directly or indirectly. In addition, Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12141 et seq., extends these same rights to inmates in all State and local facilities. Under these two laws, the standards of accessibility ensure that equal communication access and functional equivalency are provided to deaf inmates.

Recognizing a Communication Dilemma

Because the necessary technology resources are often unknown to them, jail officers, sheriffs, and administrators are frequently confused on how to meet the communication needs of the deaf inmate. As a result, deaf inmates may be denied access to the telephone network, even though they have constitutional and statutory rights to the same equal access as other inmates. When communication services are available to other inmates, but the jail fails to provide the accommodations necessary to make the same services available to deaf individuals, it becomes liable for failing to provide equal access.



Most notably, in 2015, a New York City woman who is deaf said NYPD officers wrongfully arrested her, then ignored her pleas for an American Sign Language (ASL) interpreter. The woman settled her lawsuit against the city for $750,000—a sum her attorney said was the largest deaf discrimination settlement ever awarded to a single person. The officers in this case ignored police guidelines regarding how to handle the deaf, and in doing so violated the ADA.

In another lawsuit, a deaf Ethiopian immigrant in 2014 spent six weeks in a U.S. jail, during which he was not allowed to make phone calls. His lawsuit against the sheriff's office settled for $250,000.

Meeting the Needs of Deaf Inmates

Compliance requirements are now mandated by the ADA and PREA. Court settlement amounts against prisons and jails that did not provide deaf inmates with access to make their legally entitled telephone calls have totaled in the millions. In the wake of these lawsuits, many jails are now re-evaluating their communication services that are available to the deaf.

TTY, once considered the legally accepted standard, is now an out-of-date and noncompliant technology that increases a jail's legal risk. It has been replaced by the video relay service (VRS), a newer video-based technology that seamlessly relays a video call between a deaf individual and a hearing person via an interpreter. Implementing residential VRS in jails for use by deaf inmates does meet the ADA requirement; however, it also introduces a significant security threat akin to providing a video phone to all inmates.

Residential VRS is a FCC-regulated service that provides people who are deaf or hard of hearing (HoH) with equal access to the public telephone network. Available for free to any qualifying deaf or HoH person using ASL, the service requires a video terminal, a broadband internet connection, and an account with a residential VRS provider. The residential VRS system enables a deaf person to communicate with a hearing telephone user via an ASL interpreter. The interpreter is positioned in the communication path between the deaf person and the hearing person. On one side, the interpreter communicates with the deaf person using a video terminal. On the other side, the interpreter communicates with the hearing person via a telephone. The VRS interpreter repeats exactly what is said by each party.

The introduction of a residential VRS into a jail—without a managed-access front end system—has the potential for unrestricted illegal activity. This includes but is not limited to coordinating gang activity, threatening witnesses, delivering contraband to inmates, planning escapes, and arranging other serious crimes. Even the simplest of common security practices that are implemented by Inmate Communication Services (ICS) telephone vendors for hearing inmate telephone calls cannot be implemented by residential VRS providers (per FCC rules and regulations). In addition, they are further prohibited from:

- recording residential VRS/videophone calls.
- terminating a call.
- reporting any criminal activity that may have been said by a deaf inmate.

In effect, VRS interpreters must maintain confidentiality in all residential VRS calls, regardless of whether or not the interpreter recognized the conversation involved illegal actions.

Therefore, without a managed-access video relay front-end system, residential VRS calls from jails cannot be recorded, monitored, or blocked. Additionally, without a front-end system in place for jail VRS calls, inmates using a residential VRS can easily make jail-to-jail calls without the knowledge of the jail administration. Without knowing these consequential security risks, jail administrators are rushing to install residential VRS solutions just to meet the courtmandated requirements for their deaf inmates.Unfortunately, a residential VRS introduces an unsecure communication portal into their jail that is fraught with security risks. It is imperative for the safety of jail staff and reduction of inmate-generated video relay criminal activity that a residential VRS is augmented with a secure, managed-access, front-end system.

Providing a Safe Telephone Network

Although the residential VRS system was developed to provide deaf individuals with easy-to-use equal access to the telephone network, it was architected without consideration for the specialized security concerns that are typically available in voice systems developed for correctional facilities. The following list details the inherent security risks when a residential VRS is introduced in a jail:

- No inmate identifiable call history.
- No method to restrict outbound and inbound telephone calls.
- No method to restrict peer-to-peer video calls (e.g., jail-to-jail calls).
- No method to block the inmate from making an unlimited number of telephone calls.

- Not allowed to record calls.
- No method to block the source of video messages.
- No method to block the destination for video messages.

A jail can eliminate these eight critical residential VRS security risks by taking the following actions to secure their video relay calls:

1. Require certain standardizations on strategic VRS providers:
   - Identifies calls from inmates.
   - Enforces a one-call-per connection rule.
   - Only acquires VRS numbers from those strategic VRS providers.
   - Disables residential VRS video mail for deaf inmates.
2. Install a VRS recorder that captures video and audio from both parties and allows for call monitoring. Remember that VRS providers cannot record calls.
3. Install a secure front-end video relay system that:
   - Allows jail administrators to manage inmate profiles.
   - Authorizes VRS calls per inmate profile.
   - Blocks all incoming calls.
   - Selectively records calls based upon the policies and proedures developed by the jail administrator.
4. Select a video client that:
   - Requires each deaf inmate to sign-in with a facility-assigned profile instead of the profile provided by the residential VRS provider.
   - Authenticates inmates at the secure front-end VRS ICS.
   - Limits deaf inmates to one video call per sign-in.
   - Supports maximum time limits per call.
   - Auto signs off on idle.
   - Notifies all parties that calls may be monitored and/or recorded.

Conclusion

Jails and other correctional facilities are required to provide communication devices for their deaf and HOH inmates; however, they also need to provide a safe environment for staff. The technology to achieve this is available, and administrators can avoid discrimination lawsuits by doing their research and being prepared. In today's jails, a facility's security does not need to be compromised in order to fulfill the civil rights of deaf and HOH inmates. ■

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